

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Maria Garcia, individually and As Next Friend of Minor, J. Garcia

(b) County of Residence of First Listed Plaintiff Grimes  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel M. L. Hernandez, Daniel K. Hernandez  
Hernandez Law Firm, P.C.  
305 E. Villa Maria Rd., Bryan, TX 77801

DEFENDANTS Navasota Independent School District,  
Bill Murray, Individually, Jennifer Shoalmire,  
Individually, Jennings Teel and Roy Aesh,  
Individually, Grimes

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Karla Schultz  
Walsh Anderson Brown Auldridge & Gallegos, P.C.  
Centennial Towers, 505 E. Huntland Dr. #1600, Austin, TX 78752

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Title 9, Section 1483

Brief description of cause:

Five (5) year old child neglected and discriminated against by teacher and school district

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12-3-09

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



6. Defendant Principal, Mr. Bill Murray, may be served at his place of business, 1605 Neal Street, Navasota, Texas 77868.
7. Defendant Vice Principal, Ms. Jennifer Shoalmire, may be served at her place of business, 1605 Neal Street, Navasota, Texas 77868.
8. Defendant Former Assistant/Superintendent, Jennings Teel, may be served at his residence, 616 Church St., Navasota, Texas 77868,
9. Defendant Superintendent, Rory Gesch, may be served at his place of business, 705 E. Washington Avenue, Navasota, Texas 77868.

#### FACTS

10. This is a cause of action arising from the molestation suffered by (5) year old minor, J.G., as a result of the N.I.S.D School Board knowing, willful ignorance and failure to follow N.I.S.D's internal policy and Family Code Chapter 261. Specifically, the failure to report, investigate and terminate Defendant Andaverde due to a prior valid report of child molestation made by the parents of a prior (5) year old little girl involving the same NISD School Board teacher, Mr. Roberto Andaverde ("Andaverde").
11. Defendant Andaverde was born and raised in Mexico. He is not a United States citizen and/or permanent resident. He is a Mexican citizen. Defendant Andaverde studied in Mexico to become an electrical engineer not a teacher while living in Mexico. Andaverde had no educational and/or practical training teaching prior to becoming an employee of N.I.S.D. Defendant Andaverde was a single, 29 year old man, when he first came to the United States. According to his employment file, Defendant Andaverde had no prior experience working in schools with children and/or as a school teacher, before immigrating to the United States. Moreover, Defendant Andaverde had no experience working with kindergarten and/or pre-kindergarten children. At best, he spoke English and Spanish and desired to be around kindergarten children.
12. J.G. attended Defendant School District. Andaverde was a kindergarten teacher at John C. Webb School in 2008-2009; Andaverde was J.G.'s kindergarten teacher.
13. On or about October 7, 2009, Andaverde molested J. G in her homeroom classroom during school. Specifically, Andaverde would touch minor J. G's genitalia area using his fingers. Specifically, Andaverde, would hug J.G. using one hand and then used his other hand to touch J.G.'s genitalia area. Minor, J. G. reported the incident to her mother, Maria Garcia.
14. J.G.'s mother reported the incident the same evening that she received the complaint from J.G. and discovered vaginal discharge and redness in minor's genitalia area.

15. J.G.'s mother immediately reported the incident to Assistant Principal, Ms. Jennifer Shoalmire, via telephone and then in person that same evening. Ms. Shoalmire told Ms. Garcia that she was going to contact the school Principal, Mr. Bill Murray, that same evening. Ms. Shoalmire returned Ms. Garcia's call and told her that per Mr. Murray, "Maria was to take Minor, J. Garcia to school as usual" and he would set up a meeting with the school counselor, Ms. Thomas and Ms. Shoalmire and that "the parents were not to be present at said meeting."
16. October 8, 2009 around 7:30 a.m., the minor's father, Mr. Garcia went to the school to obtain answers about the incident and before he had the opportunity to enter the school, Ms. Shoalmire stopped him and stated to Mr. Garcia that he needed to go back home and wait for the school to investigate the incident.
17. Robert Andaverde's sexual abuse had previously been reported to Principal Murray at John C. Webb School by at least one other family less than four (4) years earlier. According to the witnesses, the complaint alleged improper touching on more than one occasion by Andaverde with a female student not older than five (5) years of age during school in the classroom. No disciplinary action was taken by Principal Murray, Superintendent, and/or human resources and/or the school district against Andaverde. The district never contacted Navasota Police Department to conduct a formal investigation into this allegation against Andaverde. Additionally, the district never contacted the Texas Department of Family and Protective Services to conduct an investigation. Upon learning this information, Plaintiff has filed a complaint/grievance with Navasota Independent School District.

**CAUSE OF ACTION ONE  
CIVIL RIGHTS VIOLATIONS**

18. Plaintiff restates, re-allege and incorporate each and every allegation contained in Paragraphs (10) through (17) of this Complaint.
19. The above and foregoing conduct violates J.G.'s civil rights as guaranteed by the statutes and Constitution of the United States.
20. J. G.'s assault and deprivation of constitutional rights resulted from the NISD School Board, as the NISD policy maker, and through its designated Title IX compliance coordinator's custom, policy, and/or practice of failing to report, investigate, and discipline Andaverde for previous complaints of similar sexual assaults and harassment. Further, the NISD School Board's designation of Principal Murray amounted to delegation of policymaking authority.
21. Additionally, the NISD School Board's official training practices, customs, and policies of its employees, including but not limited to Superintendents Jennings Teel, Rory Gesch, Principal

Murray, and Vice Principal Shoalmire with regard to the handling of reports of sexual assaults and harassment was obviously inadequate and such inadequacy was so likely to result and did actually result in subsequent sexual assault by Andaverde, who had been the subject of previous complaints of similar sexual assaults and harassment.

22. Each of the acts alleged herein were done by Defendant School District, by and through its agents, servants, representatives, employees, supervisors, and policy makers, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs, policies, usages, and continuing course and under control of NISD.
23. Additionally, Individual Defendants do not enjoy qualified immunity because a reasonable person in the School board, Superintendent or Principal's position at the time of the occurrences would have realized that demonstrating deliberate indifference to what they knew was the imminent danger posed by Andaverde subjected them to supervisory liability pursuant to 42 U.S.C. § 1983.
24. The NISD School Board, Superintendent and Principal Murray had knowledge of Andaverde's misconduct, which was repeated and recent; moreover, NISD School Board, Principal Murray and the Superintendent's failure to take action against Andaverde constituted "knowing acquiescence" to abuse. When faced with the option to transfer, suspend, punish, or reprimand Andaverde, NISD School Board, Superintendent Teel, Gesch and Principal Murray left Andaverde in his position as a kindergarten teacher, a perfect opportunity for further sexual abuse of other little girls.
25. In light of the reports from another student, Andaverde displayed a pattern of sexual harassment and assault towards J.G. as early as the beginning of the 2009 school year. NISD School Board, through it designated coordinator Jennings Teel had been exposed to these reports that revealed that Andaverde was a threat and showed a strong likelihood of repeat molestation and harassment of another student. Therefore, the NISD School Board was put on notice by the student's reports, the student's parent's reports that Andaverde was a threat to kindergarten children, and NISD still failed to take adequate precautions to protect the other child from this teacher who had a history of molesting and harassing children. NISD's failure to act amounted to a deliberate indifference to the constitutional rights of kindergarten students.
26. The inaction of the NISD School Board, Superintendent, and Principal Murray constitutes supervisory encouragement, condonance, acquiescence and gross negligence amounting to deliberate indifference to J. G's Civil Rights. Specifically, there is no evidence that NISD attempted to remove, suspend, punish, or even reprimand Andaverde in or around 2005, when NISD first learned about Andaverde's propensity to sexually harass, molest and assault kindergarten students. Rather, the decision to leave a sexual predator at John C. Webb

Elementary, with unlimited exposure to other kindergarten students, amounted to deliberate indifference to the constitutional rights of J.G. and other kindergarten students at John C. Webb Elementary.

27. J. G. as a direct and proximate result of the wrongful acts of NISD School Board, Superintendent and Principal Murray suffered sexual harassment and assault. NISD School Board and Principal Murray failed to report other kindergarten student's reports of similar occurrences that happened prior to 2009 to the police and/or child protective services. NISD School Board and Principal Murray had knowledge of the serious nature of the other kindergarten student's allegations, but responded with deliberate indifference to that risk. Rather, Defendants chose to ignore the complaints. Put simply, by not taking proper action against Andaverde, NISD School Board, the Superintendent Jennings/Gesch and Principal Murray put other kindergarten students, like J. G., in great peril. As a result of this action, J.G., and other students suffered inappropriate sexual conduct by their teacher, and NISD's deliberate indifference to the prior student's allegations with the proximate cause of J. G's injuries.
28. NISD's failure to adopt an official policy or otherwise enforce a policy regarding sexual harassment or misconduct serves as the basis for § 1983 liability as NISD's omission, because it had knowledge of previous inappropriate acts by Andaverde, amounts to an intentional choice and not one (1) that is merely unintentional negligent oversight. This omission NISD is the equivalent to an intentional choice amounting to a deliberate indifference to the likelihood that Andaverde would repeat his conduct. By failing to act through enforcement of some policy regarding sexual harassment or misconduct it is obvious the consequence would result in additional acts by Andaverde resulting in the deprivation of J. G.'s constitutional rights, as well as the constitutional rights of the other students within NISD. Because NISD did nothing in response to previous allegations of sexual abuse and misconduct by Andaverde of a 5 year old student, NISD's failure to adopt or enforce any policy in response to that conduct can only be considered as an intentional choice that was consciously indifferent to the constitutional rights of NISD students. NISD was not negligent in failing to report the prior incident involving abuse and Andaverde; rather, NISD chose to intentionally ignore the complaint and chose to intentionally not report the complaint to the proper authorities (i.e. Health and Human Services and Police) regarding the serious allegations raised to them by a mother of a five year old girl concerning touching of the genitals by the sexual predator, Andaverde, prior to the incident involving minor, J. G.

**CAUSE OF ACTION TWO**  
**TITLE IX**

29. Plaintiff restates, re-alleges and incorporates each and every allegation contained in Paragraphs (10) through (28) of this Complaint.
30. Plaintiffs would further show that NISD is liable to Plaintiffs pursuant to 20 U.S.C. § 1681. Again, Plaintiffs alleges that NISD, through its agents, employees, directors, superintendent, principal, policy makers and other persons vested with authority acted in such a manner that J. G. was subjected to discrimination in violation of her bodily integrity based upon her sex. NISD through its policy makers, agents, employees, directors, superintendent, and principal has the authority to address the discrimination and sexual misconduct exhibited by Andaverde and to institute corrective measures on NISD's behalf. Further, NISD had actual knowledge of the discrimination engaged in by Andaverde, and failed to respond adequately or otherwise, to this discrimination. As a result of the NISD's failure to respond, Andaverde was given the opportunity as well as implied acquiescence, to commit additional discriminatory acts against the other NISD students. The same failure by NISD did result in the sexual assault and discrimination by Andaverde against J. G.

**DAMAGES**

31. As direct and proximate result of each and every violation of J. G.'s rights set forth above, and pursuant to each and every cause of action alleged above, Plaintiff J. G. has suffered in the past and will continue to suffer in the future:
- a. Mental injury, pain and anguish; and
  - b. Medical and psychological expenses;
  - c. Loss of liberty;
  - d. Deprivation of constitutional rights; and
  - e. Emotional distress.
32. Plaintiff Maria Garcia is entitled to recover in her individual for any medical and psychological expenses which need to be spent on for J.G.'s welfare.
33. Pursuant to 42 U.S.C. § 1988, Plaintiff J. G. also seeks her reasonable attorney's fees.

**JURY DEMAND**

34. A jury trial is demanded.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands the following relief pursuant to each cause of action:

- a. Compensatory damages for Plaintiff in an amount in excess of the jurisdictional limits of this Court;
- b. Reasonable attorneys' fees;
- c. Cost and expenses; and
- d. All such other relief as this Court may deem appropriate, including costs and reasonable attorneys' fees.

Respectfully submitted,

**HERNANDEZ LAW FIRM, P.C.**

308 E. Villa Maria Rd.

Bryan, Texas 77801

Telephone: (979) 822-6100

Facsimile : (979) 822-6001



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Daniel M.L. Hernandez

Federal ID No. 35338

State Bar No. 24034479

Daniel R. Hernandez

Federal ID No. 35339

State Bar No. 09515690

**ATTORNEYS FOR PLAINTIFF**